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No. 731

IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1963

PHILIP GIANOPULOS, *Petitioner,*

vs.

THE STATE OF ILLINOIS, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY COOK COUNTY, ILLINOIS

PHILIP GIANOPULOS
Petitioner, Pro se.

Of Counsel:
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PHILIP GIANOPULOS,

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vs.

THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY.

May It Please The Court:

The petitioner, Philip Gianopulos, a citizen of the United States of America, respectfully represents:

On October 10, 1963, the Criminal Court of Cook County, Chicago, Illinois entered an order (Appendix 1, R. 30), not reported, denying an application for writ of *habeas corpus* entitled: "People of the State of Illinois, ex rel. Philip Gianopulos, Petitioner vs. Frank Pate, Warden, Illinois State Penitentiary, Joliet, Illinois, Respondent, No. 43980".

earlier filed and supported by brief, without hearing or permitting oral argument on the questions and issues therein presented (Appendix 9). The claims were brought to the court below under the provisions of the Illinois Habeas Corpus Act (Ill. Rev. Statutes, 1961, Ch. 65), specifically, Ch. 65, Sec. 22, par. 2, therein (Appendix 3). The purpose of the present petition is to have the order and judgment of the state court reviewed by this Court, and to have the questions arising thereunder, which go to the fundamental precepts of right and justice, considered with view given as to whether the petitioner is entitled to a hearing in the court below to resolve his claims of injury and for relief by the rules, laws and Constitution of the State of Illinois, so he may be afforded the Due Process of Law and the Equal Protection of the Laws guaranteed him by the United States Constitution. In behalf of his prayer for grant of the Writ of *Certiorari*, the petitioner does show:

SUMMARY STATEMENT OF THE MATTER INVOLVED

The petitioner was sentenced to an indeterminate term of one to ten years on October 6, 1960, by the Criminal Court of Cook County, Chicago, Illinois, for the crime of burglary in the cause known as "The People of the State of Illinois, Plaintiff vs. Philip Gianopulos, Defendant, No. 55-685", and he began service of said in the Illinois State Penitentiary a few days thereafter under authority of the mittimus therein issued (R. 7). Subsequently, on November 6, 1961, he was released upon parole. On June 13, 1962, he was returned to the Illinois State Penitentiary on a parole violation warrant which was issued for him on June 6, 1962—said warrant, to the best of petitioner's knowledge and belief, did arise out of assault and battery

charges that occurred on May 21, 1962, of which petitioner was exonerated by the Municipal Court of Chicago on June 7, 1962. He received a hearing upon the question of parole violation before the August-September 1962 meeting of the Illinois Parole Board, and under the date of September 19, 1962, the said Parole Board entered the following order:

> "Not held as a violator. Ordered to resume parole." (R. 3, 7, 10).

Thereafter, without notice or hearing of any kind, or misconduct on the part of petitioner in the penitentiary, or semblance of reason under the date of October 17, 1962, the following order was entered by the Illinois Parole Board in the case:

> "Order of September 19, 1962 revoked. Continued to the December 1962 Conference." (R. 3, 7, 10).

Following, without notice or hearing of any kind, explanation of ground or cause, the Illinois Parole Board entered the succeeding orders: Under the date of December 12, 1962:

> "Continued to the January 1963 Conference." (R. 3, 8, 11).

and, under the date of January 16, 1963:

> "Declared a violator as of May 22, 1962. Continued to June 13, 1963." (R. 4, 8, 11).

Afterwards, when efforts of counsel and petitioner to find out the cause of the Parole Board's revocation of parole order and their entry of the aforesaid orders without notice, hearing or apparent cause, and the basis of petitioner's purported parole violation proved futile by the receipt of the Illinois Parole Board's reply that they do not disclose such information (Appendix 2), petitioner by coun-

sel did file a petition for writ of *habeas corpus* in the criminal Court of Cook County, Illinois, known as "People of the State of Illinois, ex rel. Philip Gianopulos, Petitioner vs. Frank Pate, Warden, Illinois State Penitentiary, Joliet, Illinois, Respondent, No. 43980", substantially based on the aforesaid facts and alleged therein (R. 2-4):

A.

"The Parole Board's revocation of their order (Exhibit 'B') without notice or hearing to the petitioner of any kind, denied him Due Process of Law and Equal Protection of the Law clauses of Section 2, Article II of the Illinois State Constitution and of the Fourteenth Amendment of the United States Constitution."

B.

"The Parole Board's revocation of their order (Exhibit 'B') without notice or hearing to the petitioner and their acts of entering their order of October 17, 1962 (Exhibit 'C') and subsequent orders of December 12, 1962 (Exhibit 'D') and January 16, 1963 (Exhibit 'E') without notice or hearing to the petitioner of any type or kind, denied him the Due Process of Law embodied in Article II, Section 2, of the Illinois State Constitution and of the Due Process of Law and Equal Protection of the Law clauses of the Fourteenth Amendment of the United States Constitution."

C.

"The petitioner has been subject to cruel, unusual and unreasonable abuse and punishment by acts, omissions and events after the Parole Board entry of their order (Exhibit 'B') by their subsequent entries of Orders (Exhibit 'C', 'D' and 'E'), and has been illegally detained and restrained of his liberty contrary to the Due Process of Laws clauses of Article II, Section 2 of the Illinois Constitution and of the Fourteenth Amendment, United States Constitution, and has been denied the Equal Protection of the Laws afforded him by the aforesaid State and Federal Constitutions."

D.

"That petitioner alleges he has been injured by the acts, omissions and events aforesaid brought about by Parole authorities and that he is entitled to relief in Law and redress by a substantial legal remedy as guaranteed him by the Constitution of the State of Illinois, Article II, Section 19, and the Fourteenth Amendment of the United States Constitution so he may have the benefits of Due Process of Law and Equal Protection of the Laws of Article II, Section 2, Illinois State Constitution and the Fourteenth Amendment, United States Constitution."

The Respondent, by counsel, filed a motion to dismiss the petition for writ of *habeas corpus* (R. 8-9), the gist of which was:

". . . this Court is without jurisdiction to supervise or otherwise control the actions of the Parole and Pardon Board." (R. 9).

The petitioner, by counsel, filed a brief in support of the petition (R. 10-27), specifically setting forth the points in contention, R. 12-14):

I.

"The Parole Board's revocation of their order 'Not to be held as a violator. Ordered to resume parole.' (Pet. Exhibit 'B'), without notice, hearing or apparent cause, and their further entry or orders without notice, hearing or apparent cause, in total disregard of their own rules made pursuant to legislative direction deprived petitioner procedural due process of law, and he is denied of his liberty without Due Process of Law and the Equal Protection of the Laws as guaranteed by the Federal and State Constitutions."

II.

"The Parole Board's revocation of their order 'Not to be held as a violator. Ordered to resume parole.' (Pet. Exhibit 'B'), without notice, hearing or apparent cause, was arbitrary and capricious in total

disregard of their own rules made pursuant to legislative direction, and their subsequent orders were likewise so, thereby denying petitioner substantive due process of law and depriving him of his liberty in violation of the guarantees afforded him by the Due Process of Law and Equal Protection of the Laws clauses of the Federal and State Constitutions."

III.

"Petitioner is entitled to speedy, free, complete relief under the decisions, laws and constitutions of the State and Federal governments so he may be afforded due process of law and the equal protection of the laws."

The aforesaid points were supported by authorities, (R. 12-14), and argued (R. 15-24). Thereafter, the Respondent, by counsel, filed a "Memorandum of Authorities in Support of Motion to Dismiss" (R. 28-29). The essence of the said "Memorandum" was (R. 28):

> "... that the Court is without jurisdiction to supervise or otherwise control the actions of the Illinois Parole and Pardon Board. The basis for this contention is that the said Board is an executive body having powers conferred on it to exercise certain administrative functions and the Illinois Supreme Court has held that a Court in *habeas corpus proceedings* cannot interfere with the exercise of these functions and substitute its judgment for that of the Board."

After citing cases, the Respondent, by counsel, concluded his "Memorandum" (R. 29):

> "We respectfully submit that the above cited authorities are controlling, and therefore, do not see fit to reply in detail to the extensive brief filed in behalf of the relator."

The Court below, the Honorable Alexander Napoli, judge presiding, on the initial day set for the cause, stated that the motion and briefs of the parties would be read before the date set for continuance, October 10, 1963. On October 10, 1963, the Court below stated all the papers filed in the

cause had been read and taken notice of, and precluded any oral argument in the matter by counsel for the petitioner (Appendix 9) finding for the Respondent by sustaining the Respondent's Motion to Dismiss, by the entered Order (Appendix 1, R. 30), denying the prayer of the petitioner for a hearing in the cause. Petitioner was and is thereby foreclosed from any further action in remedy in his case by the courts of the State of Illinois.

BASIS OF THE COURT'S JURISDICTION

This august Court may by petition for writ of certiorari have the instant cause certified to it for determination under the provisions of Title 28, United States Code, Section 2101 (c), approved June 25, 1948. The order of the Criminal Court of Cook County (Appendix 1, R. 30), rendered on October 10, 1963, under the Illinois Habeas Corpus Act, is a final decision of the state court of last resort.

The validity of petitioner's loss of liberty and detention in the state penitentiary by acts, omissions and events which occurred subsequent to his conviction by and under the sole authority of the administrative body of the state known as the Illinois Pardon and Parole Board is drawn in question on the ground of its being irreconcilable to the Fourteenth Amendment of the United States Constitution.

The claims were presented in the state court by pleading on petition (R. 4-6), and supporting brief (R. 12-14), and were raised as federal questions and as such were necessarily decided by the said court (Appendices 1 and 9, R. 30), in denying the prayer for writ of habeas corpus without permitting a full hearing or any oral argument in the matter.

Petitioner again repeats his claims and invokes Section 1 of the Fourteenth Amendment to the Constitution of the United States (Appendix 6).

Cases on which he relies for jurisdiction are:

Loftus v. *Illinois*, 334 U.S. 804, 68 S.Ct. 1212;
Brown v. *Allen*, 344 U.S. 443, 73 S.Ct. 397;
Brown v. *Allen*, 344 U.S. 488, 73 S.Ct. 437.

STATUTORY PROVISIONS INVOLVED
(Pertinent portion of)

Illinois Habeas Corpus Act, Ch. 65 (Ill. Rev. Stat., 1961), specifically Sec. 22, Par. 2, thereof (Appendix 3);

Illinois Sentence and Parole Act, Ch. 38, Sec. 801, et seq., (Ill. Rev. Stat., 1961), specifically, Sec. 807 thereof (Appendix 4);

Rules and Regulations of the Parole and Pardon Board Concerning Paroles printed in pamphlet form under the title of "Rules and Statutes Relating to Parole and Pardons". (Appendix 5).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment XIV, Section 1 (Appendix 6);

Illinois Constitution, Article II, Sec. 2, (1870) (Appendix 7);

Illinois Constitution, Article II, Sec. 19, (1870) (Appendix 8).

QUESTIONS PRESENTED

I.

Were the questions before the State court adequately presented and properly decided as federal questions under the adjective law as declared by this Court?

II.

Did the Illinois Board of Parole and Pardons afford the petitioner procedural due process of law by revoking their order granting a parole and their entry of subsequent orders without knowledge or notice to him of the nature of the offense (reason for violation of parole), his accusers, or to accord him an opportunity to be heard and introduce evidence in his own behalf?

III.

Did the Board of Parole and Pardons act in accordance with their own rules and regulations in entering the orders by which petitioner is deprived of his liberty, and were their acts, omissions and events which occurred thereby, in accordance with the "Due Process of Law" and "Equal Protection of the Laws" clauses of the Fourteenth Amendment to the United States Constitution?

IV.

Is the petitioner, under the facts of the case, being deprived of his liberty in violation of guarantees embodied in Section 1 of the Fourteenth Amendment of the United States Constitution by arbitrary and capricious action by the Board of Parole and Pardons?

V.

Did the criminal court of Cook County afford the petitioner procedural due process by denying the writ of habeas corpus without permitting a full hearing, oral argument of counsel of the issues, or making a determination of reason or ground for such denial under the facts and allegations there submitted?

VI.

Is the petitioner entitled to a remedy, with hearing of his claims of violations of his constitutional right, and relief to follow, if justified, under both the State and Federal Constitutions?

REASONS RELIED ON FOR ISSUANCE OF THE WRIT

The petitioner respectfully submits that the criminal court of Cook County by order and judgment has decided Federal Questions of substance in a way probably not in accord with the applicable decisions of this Court, and, in so doing, proceeded in the premises in a manner which is not in agreement with the applicable decisions of this Court.

Under the ambit of the teachings of this Court in *Lowell v. Griffin*, 303 U. S. 444, *et al*, it is submitted the questions presented to the state court and certified here are federal propositions ripe for review.

As it was shown to the state court below by brief (R. 17), the Illinois Supreme Court has on prior parole statutes recognized the implication of the constitutional guarantees as in 29 *A.L.R.* 2d 1112-1114, under the titles of "Parole" and "Nature, factor and sufficiency of hearing", it was said:

> ". . . that a parole was in the nature of a contract which did not contemplate that a warden could reimprison a parolee regardless of whether he violated his parole, as a mere exercise of tyrannical power, and that the provisions in the statute requiring the warden to report immediately to the board of pardons the return of a paroled prisoner and the reasons therefore was for the purpose of providing the board's review of the warden's action. The courts predicated the right to a hearing upon the due process clauses of the state and federal constitutions, pointing out that the term 'due process of law' is not confined to judicial proceedings, but extends to every governmental proceeding which may deprive a citizen of life, liberty, or property, whether the process be legislative,

judicial or administrative." The rule announced in this decision has been recognized in *People ex rel. Seiler* v. *Hill*, (1932) 348 Ill. 441, 181 N.E. 193 and *United States ex rel. Harris* v. *Ragen*, (1948) DC Ill., 81 F. Supp. 303, under a later, but similar, Illinois parole statute." *People ex rel. Joyce* v. *Strassheim* (1909), 242 Ill. 359.

Now under the current statute as amended in 1961, Sentence and Parole Act" (ch. 38, secs. 801, *et seq.*, Ill. Rev. Stats. 1961), in Sec. 807 thereof (Appendix 3), the State Legislature confers upon and directs the:

> ". . . Parole and Pardon Board to make rules and regulations not inconsistent with this Act under which prisoners . . . may be allowed to go upon parole . . . Prisoners so released are considered in the legal custody of the officers of the Parole and Pardon Board subject to be taken at any time within the enclosures of the penitentiary . . . Should any prisoner or ward who is paroled be declared to be a parole violator he shall be given credit for time spent on parole only to the date of the violation as determined by the Parole and Pardon Board at a hearing conducted upon the return of the prisoner . . . to the institution; . . ."

Pursuant to the "Sentence and Parole Act, *supra*, the Board of Pardons and Paroles has formulated rules published in a pamphlet entitled "Rules and Statutes Relating to Parole and Pardons" in force and effect on and after June 1, 1962, pp. 1-58, in which the "Rules and Regulations of the Parole and Pardon Board Concerning Paroles", pp. 17-28, appear (Appendix 4). These said rules clearly provide for notice and hearing with the prisoner present before a subcommittee of the Parole and Pardon Board in every proceeding where an order or finding is to be entered in a cause (Appendix 4, Rules 4, 7, 8, 15 and 21), except on that of a request for rehearing (Appendix 4, Rule 16), and, even there when granted a

prisoner is given notice and hearing by the Board. In the instant cause, it is reiterated, after being returned to the penitentiary, petitioner was found not to be a parole violator by the proceedings provided in Rule 21 (Appendix 4), and ordered to resume parole on the Parole Board's only review of his case (R. 3, 7, 10). The other orders of the Parole and Pardon Board—Revocation of parole earlier granted and continuance, (R. 3, 7, 10), Continuance (R. 3, 8, 11), and, Finding petitioner a violator, and continuance (R. 4, 8, 11), were entered without notice, hearing or reason given to date though inquiry has been made (Appendix 2). Such action of the Board of Paroles and Pardons was in absolute disregard of their own Rules (Appendix 4), and did deny to the petitioner procedural due process of law, for that "which a law makes essential in proceedings involving the deprivation of life or liberty cannot be dispensed with. . . ." *Hopt* v. *Utah*, 110 U.S. 574, 4 S. Ct. 202, 204.

Likewise, on the record before the Court, the facts are admitted to be well pleaded, and the allegations are to be taken as true on the motion to dismiss (R. 8-9), filed in the state court by counsel for the Respondent. See: *Pease* v. *Kendal*, 391 Ill. 193, 63 N.E. 2d 2, and *Vrooman* v. *Hawbaker*, 387 Ill. 428, 56 N.E. 2d 761, the order of revocation of petitioner's earlier granted parole (R. 3, 7, 10), and subsequent orders entered in the cause (R. 3-4, 7-8, 10-11) without notice, hearing or reason then or since shown (Appendix 2), were arbitrary and capricious acts and omissions of the Parole and Pardon Board, not only contrary to their own expression of "Rules" (Appendix 4), as aforesaid, but they did and have taken the untenable position of a muted inquisitor and accuser, as well as secret interpreter, active prosecutor, jury and judge, and thereby

deprived the petitioner the guarantees of due process of law and the equal protection of the laws of Section 1 of the United States Constitution. *Dent* v. *Virginia*, 129 U.S. 114, 124; *Riverside Cotton Mills* v. *Menefree*, 237 U. S. 189.

The Criminal Court of Cook County could and should have given the petitioner "due process" in determining the adjective and substantive law of the State of Illinois and the "Rules" made pursuant thereto as was held in *Brinkerhoff-Farris Trust & Savings* v. *Hill*, 281 U.S. 673, by holding a hearing in which the Board of Parole and Pardons records could be searched, witnesses heard, and a determination made for or against relief on some specific reason or grounds as was discussed in *Young* v. *Ragen*, 337 U.S. 235, 69 S.Ct. 1073, and *Woods* v. *Nierstheimer*, 328 U.S. 211, 66 S.Ct. 996.

The remedy, Illinois Habeas Corpus Act, (ch. 65, Ill. Rev. Stats. 1961), particularly Sec. 22, par. 2, thereof (Appendix 3), utilized by prisoners in the Illinois Courts on matters concerning the Parole Board numerous times as the "Memorandum of Authorities in Support of Motion to Dismiss" (R. 28-29), filed by counsel for the Respondent, does clearly demonstrate. The criminal court below was not without jurisdiction to, nor the Parole Board immune from, the examination of acts, omissions and events which are contrary to constitutional guarantees or in excess of powers conferred to exercise administrative functions by the Legislature of the State. Petitioner though a convicted person has a right to be punished in accordance to laws, not by the whim of men acting in any capacity of the government. It has often been declared:

> "Fundamental rights shall not be taken from a person arbitrarily without the right to be heard according to the usual course of the law in such cases."
>
> *Frank* v. *Mangum*, 237 U.S. 309, 333;
>
> *Garland* v. *Washington*, 232 U.S. 642, 645;
>
> *Rogers* v. *Peck*, 199 U.S. 425, 435.

The denial of his prayer for hearing in the State Court below by the proceedings there had (Appendix 9) and the entered order (Appendix 1, R. 30) is to no lesser degree a violation of his constitutional rights than the orders entered by the Parole Board without hearing under the facts of this case. By the guarantee of the Illinois Constitution, Article II, Sec. 19 (Appendix 8), a remedy is to be found in the laws of that State to any person injured in his person. The right is apparent, the remedy was denied, as it was raised in contention by petition (R. 5) and brief (R. 14), and is again brought to this Court's attention under the "due process of law" and "equal protection of the laws" clauses of the Fourteenth Amendment to the United States Constitution (Appendix 6).

CONCLUSION

The cause here behooves full hearing of all its elements by some Court in the Land for the reasons stated.

Wherefore, the petitioner, Philip Gianopulos, prays the Writ of Certiorari may issue.

Respectfully submitted,

PHILIP GIANOPULOS
Petitioner Pro se.

Of Counsel:
SIDNEY TEPPER

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served the foregoing petition for certiorari by mailing three copies thereof to the Attorney General of the State of Illinois, Springfield, Illinois, and three copies thereof to Daniel Ward State's Attorney of Cook County, Illinois.

.....
Philip Gianopulos

APPENDIX 1.

Order Of The Criminal Court Of Cook County Denying Application For Writ Of Habeas Corpus on October 10, 1963.

UNITED STATES OF AMERICA

State of Illinois } ss.
Cook County }

Pleas, before a branch of the Criminal Court of Cook County, in said County and State, at a term thereof begun and held at the Criminal Court House, in the City of Chicago, in said County, on the first Monday (being the seventh day) of October in the year of our Lord one thousand nine hundred and sixty three and of the Independence of the United States the one hundred and eighty eighth.

Present:- Honorable Alexander J. Napoli
Judge of the Superior Court of Cook County, and Ex-Officio Judge of the Criminal Court of Cook County.

Daniel P. Ward State's Attorney.
Richard B. Ogilvie Sheriff of Cook County.
Attest: John J. Altman Clerk.

And afterwards, to-wit on the tenth day of October in the year last aforesaid, it being the term of Court aforesaid, there being present Honorable Alexander J. Napoli Judge of the Superior Court of Cook County, Illinois, and Ex-officio Judge of the Criminal Court of Cook County, Illinois. Daniel P. Ward State's Attorney, Richard B. Ogilvie Sheriff, and John J. Altman Clerk.

The following among other proceedings were had and entered of record in said Court, which said proceedings are in words and figures following to-wit:

THE PEOPLE OF THE STATE OF ILLINOIS EX REL. PHILIP GIANOPULOS, *Relator*, vs. FRANK PATE, WARDEN ILLINOIS STATE PENITENTIARY, JOLIET ILLINOIS, *Respondent.*	Habeas Corpus No. 43980

This day come the said Relator, Philip Gianopulos, by his Counsel and the said Respondent by his Counsel, Daniel P. Ward, State's Attorney also comes.

This cause coming on before the Court for a Hearing upon the Petition for Writ of Habeas Corpus of said Relator, Philip Gianopulos, and the Motion to Dismiss of the Respondent, heretofore filed herein in the above entitled cause.

And the Court having inquired into the cause to the caption and detention of said Relator, Philip Gianopulos, and the Court being fully advised in the premises, doth order that the Motion to Dismiss of the Respondent be and the same is hereby Sustained, and the Petition for Writ of Habeas Corpus in this cause, be and the same is hereby Denied.

APPENDIX 2.

State of Illinois
Department of Public Safety
PAROLE AND PARDON BOARD
Springfield
March 5, 1963

Members
Charles F. Kinney, chairman
Louis Zahn
Henry S. Wise
James C. Craven
Douglass R. Turner

Thomas G. O'Connell
Superintendent

SUBJECT: Philip Gianopulos 47233 Joliet

Sidney Tepper
Attorney-at-law
105 West Adams
Chicago 3, Illinois

Dear Sir:

Your letter dated March 4, 1963 requesting the status of the above named case has been received.

Please be advised that subject was received at the Illinois State Penitentiary on November 4, 1960 on his plea of guilty to the crime of burglary for which he received an indeterminate sentence of from one to ten years on October 6, 1960.

He was heard on the question of parole in connection with the October 1961 parole docket and at that time it was the order of the Board that he be paroled effective November 4, 1961.

He was released on parole November 6, 1961 and was returned from parole on June 13, 1962. He was heard on the question of parole violation and the following orders was entered in this case:

"Sep. 19, 1962 Not held as a violator. Ordered to resume parole.

"Oct. 17, 1962 Order of September 19, 1962 revoked. Continued to the December 1962 conference.

"Dec. 12, 1962 Continued to the January 1963 conference.

"Jan. 16, 1963 Declared a violator as of May 22, 1962. Continued to June 13, 1967."

Under the above order he will again be considered on the question of parole in connection with the October 1965 parole docket, if he gains all possible "Merit Time" for good behavior in the institution.

It is the policy of the Parole Board to never reveal the reason for an order entered in any case.

Trusting this is the information you desire.

Very truly yours,

Thomas G. O'Connell
Thomas G. O'Connell
Superintendent

TGO'C-mie

APPENDIX 3.

Illinois Habeas Corpus Act (Ch. 65, §22, ¶ 2, Ill. Rev. Stat. 1961):

"Causes for discharge when in custody on process of court) § 22. If it appears that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for some of the following causes:

"¶2. Where, though the original imprisonment was lawful, yet, by some act, omission or event which has subsequently taken place, the party has become entitled to his discharge."

APPENDIX 4.

"Sentence and Parole Act (Ch. 38, §§ 801-817, Ill. Rev. Stat. 1961), specifically § 807 thereof:

§ 807. *Rules and regulations—Employers or sponsors—Enforcement of rules and regulations—Eligibility to parole—Final discharge*

The Parole and Pardon Board shall establish rules and regulations, not inconsistent with this Act, under which prisoners in the Illinois State Penitentiary, in the State reformatory for women and in such other State institutions as are now or may hereafter be provided for the incarceration, punishment, discipline, training or reformation of the prisoners or wards committed thereto, may be allowed to go upon parole outside of the institutional buildings and enclosures, and shall issue paroles in accordance with the provisions of this Act and of such rules and regulations adopted hereunder. The Parole and Pardon Board may provide in its rules and regulations that arrangements shall be made for honorable and useful employment while on parole when, in its judgment, such employment is desirable or necessary in any particular case. However, no prisoner or ward shall be released from

either the penitentiary or the reformatory for women, or such other institution herein in this Act mentioned until the Parole and Pardon Board shall have made arrangements or shall have satisfactory evidence that arrangements have been made for a proper and suitable home free from criminal influence and without expense to the State while upon parole. The prospective employer or sponsor of any prisoner or ward shall not be a person who holds office either by election or appointment or any employment whatsoever with the State of Illinois, any county, township, city or village, or any municipal corporation or quasi-municipal corporation in the State of Illinois; nor shall said employer or sponsor be a committeeman of any political party in the State of Illinois.

For the purpose of obtaining satisfactory evidence, the Board or any employee thereof, designated, in writing, by the Board, shall have power to administer an oath to the prospective employer or sponsor or any prisoner or ward and may interrogate him as to any matter relevant to his fitness to assume the responsibility of providing honorable and useful employment or a proper and suitable home, as the case may be, for any such prisoner or ward; but no prospective employer shall be required to travel outside of the county in which he resides to be so examined.

All prisoners and wards so temporarily released upon parole, shall, at all times, until the receipt of their final discharge, be considered in the legal custody of the officers of the Parole and Pardon Board, and shall, during the said time, be considered as remaining under conviction for the crime or offense of which they were convicted and sentenced or committed and subject to be taken at any time within the enclosure of such penitentiary, reformatory and institution herein mentioned. Should any prisoner or ward who is paroled be declared to be a parole violator he shall be given credit for time spent on parole only to the date of the violation as determined by the Parole and Pardon

Board at a hearing conducted upon the return of the prisoner or ward to the institution; however, in the discretion of the Parole and Pardon Board the prisoner or ward may be paroled at any time subsequent to his return as a parole violator.

Full power to enforce such rules and regulations and to retake and reimprison any inmate so upon parole is hereby conferred upon the officers and employees of the Parole and Pardon Board. The order or writ certified to by the warden, superintendent or managing head of such penitentiary, reformatory or such other institution above mentioned, with the seal of the institution attached and directed to all sheriffs, coroners, constables, police officers or to any particular persons named in the order or writ shall be sufficient warrant for the officer or other person named therein to authorize the officer or person to arrest and deliver to the proper officer of the penitentiary, reformatory or such other institution the body of the conditionally released or paroled prisoner named in the writ, and all sheriffs, coroners, constables, police officers or other persons named therein shall execute the order of writ the same as criminal processes. In case any prisoner or ward so conditionally released or paroled shall flee beyond the limits of the State, he or she may be returned pursuant to the provisions of laws of this State relating to fugitives.

No prisoner or ward shall be eligible to parole after his or her commitment in the penitentiary, reformatory for women or State institution in this Act mentioned, until he or she shall have served the minimum limit or duration of imprisonment fixed by the court (or, in case the prisoner or ward was sentenced prior to the effective date of this amendatory Act of 1943, until he or she shall have served the minimum term of imprisonment provided by law for such offense) and, in either event, less good time allowed as provided by law. Unless a prisoner or ward is earlier discharged as provided in Section 9 of this Act, the term of im-

prisonment of a prisoner or ward committed hereunder shall terminate at the expiration of the maximum limit of duration of imprisonment fixed by the court, (or, if the prisoner or ward has been sentenced or committed prior to the effective date of this amendatory Act of 1943, at the expiration of the maximum term provided by law for the offense for which such prisoner or ward stands convicted), making allowance, in either event, for good time as provided by law. As amended 1937, July 9, Laws 1937, p. 481, § 1; 1943, June 2, Laws 1943, vol. 1, p. 591, § 1; 1947, July 21, Laws 1947, p. 808, § 1; 1949, Aug. 2, Laws 1949, p. 723, § 1; 1951, July 9, Laws 1951, p. 1031, § 1; 1951, Aug. 2, Laws 1951, p. 1917, § 1; 1953, July 13, Laws 1953, p. 1168, § 1; 1961, July 28, Laws 1961, p. 2271, § 1.

[1] Section 801 et seq. of this chapter.

[2] Section 810 of this chapter.

APPENDIX 5.

"Rules and Regulations of the Parole and Pardon Board Concerning Paroles", pp. 17-28 of a pamphlet entitled "Rules and Statutes Relating to Parole and Pardons" in force and effect on and after June 1, 1962:

RULES AND REGULATIONS of the PAROLE AND PARDON BOARD CONCERNING PAROLES

1. Prisoners in the Illinois State Penitentiary, the State Reformatory for Women and the Illinois State Reformatory at Sheridan serving indeterminate sentences shall be eligible to consideration for parole in accordance with the following statutory provisions:

(A) When he or she shall have served the minimum limit or duration of imprisonment fixed by the court, or

(B) In case the prisoner was sentenced prior to July 1, 1943, when he or she shall have served the minimum term of imprisonment provided by law for the crime of which he or she was convicted.

(C) Every person sentenced to the penitentiary regardless of when sentenced, and regardless of the length of sentence shall be eligible for parole at the end of 20 years unless his or her minimum sentence, less "Good Time" is less than 20 years.

In each case "Good Time" shall be deducted as prescribed by the rule of the Department of Public Safety providing for the diminution of sentences as required by statute, hereinafter referred to as "Good Time", as distinguished from "Merit Time".

(NOTE)—For the rule providing for "Good Time" in diminution of sentences, see Appendix.

2. The Parole and Pardon Board will also recognize time earned under the "Progressive Merit System" established in the Illinois State Penitentiary, the State Reformatory for Women and Illinois State Reformatory at Sheridan, hereinafter referred to as "Merit Time", and "Industrial Credits" requested by the respective wardens, (which have been approved by the Board), in determining when a prisoner serving an indeterminate sentence may again be eligible to consideration for parole after his or her case has been continued. In no case shall "Merit Time" earned under the "Progressive System" operate to reduce the minimum or maximum terms of imprisonment.

(NOTE)—For the rule establishing the "Progressive Merit System" and providing for "Industrial Credits", see Appendix.

3. Prisoners sentenced to the Illinois State Penitentiary, the State Reformatory for Women and the Illinois State Reformatory at Sheridan, for the crimes

of murder, misprision of treason, rape and kidnapping shall in the discretion of the Parole and Pardon Board be eligible to consideration for parole under the following statutory provisions:

(A) Persons sentenced for life shall be eligible after the service of the minimum of twenty calendar years provided by law.

(B) Persons sentenced for a definite term of years shall be eligible to consideration for parole when such person has served the minimum sentence provided by law for the particular crime of which he or she was convicted, "Good Time" being allowed, and/or has served at least one-third of the time fixed in said definite sentence; provided that, regardless of when sentenced, or length of sentence, such person shall be eligible for parole at the end of 20 years.

4. For every month a docket shall be prepared at each Division of the Illinois State Penitentiary, the State Reformatory for Women and the Illinois State Reformatory at Sheridan, listing the names of all prisoners in the respective institutions who are eligible to consideration for parole at that time, as determined by these rules and the provisions of the Sentence and Parole Act.

Prisoners serving indeterminate sentences shall have their names placed on the respective dockets as follows:

Prisoners who are completing their minimum periods of imprisonment, (as fixed by statute or the court), shall have their names placed on the dockets for the months in which they will have served such minimum periods of imprisonment, less "Good Time."

Prisoners whose cases have theretofore been continued to future dates for consideration shall have their names placed on the dockets the month preceding that in which the continuances expire, after allowing "Merit Time" earned under the "Progressive Merit System" and "Industrial Credits."

Prisoners serving sentences for definite terms of years or for life shall have their names automatically placed on the dockets when eligible to consideration for parole as provided in Rule 3.

The names of prisoners whose cases are continued for a year or less, shall appear on the docket for the month to which the continuance was ordered.

No prisoner will be given a hearing who is out of grade, in isolation or deadlock. His case will be continued until his release from the aforementioned unit or until he is in Grade the proper length of time.

5. Only those prisoners who are in "Grade A", as determined by the wardens of the respective institutions under the "Progressive Merit System", and shall have been in "Grade A" for three consecutive months, at least ten days prior to the date of the subcommittee sessions at the several institutions, shall be entitled to consideration for parole.

6. (A) Prisoners serving definite and indeterminate sentences running concurrently shall not have their names placed on the dockets until they are eligible to consideration for parole under the longer sentence.

(B) Prisoners serving a life sentence under the Habitual Criminal Act shall be eligible to parole when twenty years have been served.

(C) Prisoners sentenced to indeterminate sentences after January 1, 1962 shall be eligible to parole as in other indeterminate sentences under Rule 1, but in no case shall the minimum be more than twenty years.

7. Subcommittees of the members of the Parole and Pardon Board shall attend the several Divisions of the Illinois State Penitentiary, the State Reformatory for Women and the Illinois State Reformatory at Sheridan each month and hear only those prisoners whose names appear on the respective dockets for hearing.

8. On the first day of the respective sessions of the subcommittees and the day immediately following if so designated by the members of the Board, relatives, friends and counsel for the prisoners may attend and be heard in behalf of the prisoners whose names appear on the docket, as well as persons who desire to protest the release of the prisoners.

No subsequent oral arguments will be heard in cases appearing on that particular docket, but attorneys or other persons may submit in writing to the Parole and Pardon Board any brief or statement of fact in behalf of or in opposition to the parole of any inmate whose name appears on the docket.

9. At prisoners minimum hearing, notice of subcommittee meetings shall be given by the Board to the Trial Judge and State's Attorney of the county in which the respective prisoners whose cases are to be considered were convicted, and to the complaining witnesses.

10. At the conclusion of the sessions of the subcommittees at the respective institutions, they shall make reports of the interviews with the prisoners, and of those who appear in their behalf, if any, and those who appear in protest, if any, and shall prepare summaries giving all available pertinent information concerning the prisoners.

11. The members of the Parole and Pardon Board shall attend in conference in Springfield monthly and consider the cases of all prisoners whose cases appear on the dockets heard at the preceding subcommittee sessions. In addition to the reports of the subcommittees, they shall consider pertinent information directly submitted to the Board, and the conduct records of the prisoners kept by the wardens or superintendent.

Oral argument in favor of or in opposition to the parole of a prisoner will not be heard by the members in conference.

12. If the members of the Parole and Pardon Board in conference determine that a prisoner serving an indeterminate term is entitled to parole, they shall enter an order for parole. If they determine that a prisoner is not a fit person to serve his sentence outside the penitentiary, a parole shall be denied, and such further order entered as in the judgment of the members is deemed warranted.

13. When a prisoner serving a sentence for a definite term of years or for life is denied parole by the Parole and Pardon Board, further consideration will not be given until the time designated in the Board order. In the event that a time is not specifically designated, further consideration will not be given until the lapse of one year from the date of the order denying parole.

14. In its consideration of the question of whether a prisoner should be paroled, the Parole and Pardon Board shall evaluate all the factors in each case, including the prisoner's conduct record, and grant or deny release on parole in accordance with its judgment.

15. When a prisoner serving an indeterminate sentence is denied parole and his case continued to a future date, the order for the continuance is no assurance that the prisoner will be paroled at the subsequent hearing. The prisoner will again be interviewed, all factors in his case again considered, and such order entered as is deemed warranted.

If, at any time, prior to the date to which any case has been continued, the Board, upon a hearing, is satisfied that the prisoner should be paroled, its former order may be revoked and a parole authorized.

16. A rehearing will be granted only by the affirmative action of the Board in conference.

After a parole is denied a rehearing may be requested by the inmate. Such request must be made in writing and must set forth new facts and circum-

stances with reference to the crime for which subject is serving or extraordinary circumstances or facts which have arisen, or both, which have not heretofore been considered by the Board and which upon examination would warrant such rehearing.

Oral argument in support of the application will not be permitted.

When a rehearing is granted, the case of such inmate shall be placed on a subsequent docket for hearing.

17. At the close of each conference of the Parole and Pardon Board, the Superintendent of the Parole and Pardon Board shall cause to be sent to the warden of each institution a copy of the order entered in the case of each prisoner in his institution whose case has been heard, to be transmitted to the respective inmates.

18. When an order for the release on parole of a prisoner is entered, it shall not be effective nor shall the prisoner be released, until the Parole and Pardon Board has made arrangements or shall have satisfactory evidence that arrangements have been made for his or her honorable and useful employment while upon parole in some suitable occupation, and also for a proper and suitable home free from criminal influence and without expense to the State.

Prisoners who have been granted a parole but violate institution rules prior to release on parole may, in the discretion of the members of the Parole Board, have their parole order revoked.

19. Before being released on parole each prisoner shall be required to enter into and execute a written agreement with the Parole and Pardon Board, on a form which has been approved by the Board, wherein shall be stipulated the terms and conditions upon which parole has been granted, and containing a promise by the prisoner that he will faithfully observe the

rules governing prisoners on parole. After release on parole, each parolee shall monthly make a written report to the Parole Agent assigned to supervise him, giving the information required to be made in the Parole Agreement so long as the prisoner shall be on parole and until a final discharge is issued and delivered to him; provided, that, where parolees are inducted into any branch of the Armed Forces of the United States, supervision of such parolees may be temporarily suspended by the Superintendent of Supervision of Parolees.

20. When prisoners are released on parole they shall be under continuous supervision by the Superintendent of Supervision of Parolees until the expiration of the maximum periods of their sentences; subject, however, to earlier discharge under the following conditions:

(A) Parolees who have not previously been sentenced to a penitentiary or reformatory in Illinois, or elsewhere, shall be eligible to consideration for a final discharge at the end of three years, unless sooner discharged by expiration of sentence.

(B) Parolees who have had one previous sentence to a penitentiary or reformatory in Illinois, or any other state, or a Federal Penitentiary, shall be eligible to consideration for a final discharge at the end of four years, unless sooner discharged by expiration of sentence.

(C) Parolees who have had two or more previous sentences to a penitentiary or reformatory, whether in Illinois or elsewhere, shall be eligible to consideration for a final discharge at the end of five years, unless sooner discharged by expiration of sentence.

(D) Parolees who are serving for murder shall serve a minimum period of five years on parole unless sooner discharged by expiration of sentence.

Issuance of a discharge at the end of the above periods shall be within the discretion of the Parole and Pardon Board and shall be conditioned upon the favorable recommendation of the Division of Supervision of Parolees based on the parolee's faithful performance of the parole agreement; provided, that, if a parolee at the expiration of six months from the date of his release on parole is serving satisfactorily in the Armed Forces of the United States of America, or in the United States Merchant Marine, he may, in the discretion of the Parole and Pardon Board, be granted a final discharge.

21. When a paroled prisoner is returned to the Illinois State Penitentiary, the State Reformatory for Women or the Illinois State Reformatory at Sheridan upon a warrant issued for a violation of the terms of the Parole Agreement, his or her name shall be placed on the next parole docket prepared in the regular course at the institution where he or she is confined; provided his or her return to the institution is at least ten days prior to the next succeeding meeting of the subcommittee at the institution. Such prisoner shall be heard by the subcommittee of the Parole and Pardon Board which attends the institution, a report shall be made, and the case of the prisoner shall be considered by the Parole and Pardon Board. If the Parole and Pardon Board determines that the prisoner has violated any of the terms and conditions of parole, he or she may be declared a parole violator and the case continued to a future date for further review and consideration. If it is determined that the prisoner has not violated the terms and conditions of parole, the Board shall so declare, and the prisoner shall be ordered to resume parole subject to arrangements for suitable employment and a proper home.

22. When a paroled prisoner is returned to the Illinois State Penitentiary, State Reformatory for Women or the Illinois State Reformatory at Sheridan

under a new sentence for a crime committed while on parole, his or her case under the prior sentence shall be heard by the Parole and Pardon Board and an order entered declaring the prisoner a parole violator on the prior sentence, and the case continued until he or she is eligible to consideration for parole under the new sentence.

23. When a parolee is released on parole he shall be given credit for time served under his sentence only for the period of time on parole during which he has faithfully complied with all the terms and conditions of his parole.

In the event of violation, the determination of credit for time served in faithful compliance shall be in accordance with the statutory provision that the Parole and Pardon Board shall determine the date of violation at a hearing conducted upon the return of the prisoner to the institution.

Upon failure of a paroled prisoner to make reports as required by the Parole Agreement, or in the event he otherwise violates any of the terms or conditions of his parole, he shall be considered in default. If at any time he is returned to the penitentiary and declared a parole violator he shall be given credit for the time served in prison and on parole before violation.

When a prisoner is returned to the penitentiary upon a warden's warrant for violation of parole he shall be given credit for the time served up to the date of violation as declared by the Parole and Pardon Board and also the time during which he is being held in custody on the warden's warrant on his maximum sentence until he is again released on parole. This credit to apply to the maximum of his sentence.

APPENDIX 6.

United States Constitution, Amendment XIV, § 1:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

APPENDIX 7.

Illinois Constitution (1870), Article II, § 2:

"No person shall be deprived of life, liberty or property without due process of law."

APPENDIX 8.

Illinois Constitution (1870), Article III, § 19:

"Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation, he ought to obtain by law, right and justice freely, and without being obliged to purchase it, completely and without denial, and without delay."

APPENDIX 9.

State of Illinois)
) ss.
County of Cook)

IN THE CRIMINAL COURT OF COOK COUNTY
OCTOBER TERM, A. D. 1963

PHILIP GIANOPOULOS,
Relator,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

Habeas Corpus No. 43980
Before Chief Justice
Alexander J. Napoli.

Thursday, October 10th, 1963
At 10:00 o'clock A. M.
Court convened pursuant to continuance.
Present: Mr. Sidney Tepper,
on behalf of the Relator;
Hon. Daniel P. Ward,
State's Attorney of Cook County,
By Mr. Bernard Deeney,
Assistant State's Attorney,
on behalf of the Respondent.

The Clerk: Philip Gianopoulos.

Mr. Deeney: This is a writ in which counsel filed a petition for the Relator, who is an inmate at the penitentiary, the Illinois State Penitentiary.

The Court: I read the briefs, gentlemen. There is no purpose in hearing any further argument. I am going to rule in your favor on this, Mr. Deeney.

Mr. Deeney: The writ will be quashed—no, there was no writ issued in this case, so the motion to dis-

miss that I filed, Judge, should be allowed or sustained.

The Court: Motion to dismiss sustained.

Mr. Tepper: Does your Honor feel there is no merit in the petition?

The Court: I don't see how I have jurisdiction of this at all.

Mr. Tepper: To question the arbitrary and capricious acts of the Board? Your Honor has felt that the State—

The Court: I am not saying they are arbitrary and capricious.

Mr. Tepper: My petition says it is and I am entitled to a hearing, I believe.

The Court: I don't think so.

Mr. Tepper: We will have a writ of certiorari to the Supreme Court of the United States.

The Court: That is all right, let them pass on that question.

Mr. Tepper: Yes.

The Court: My understanding of the law is as I am ruling this morning.

Mr. Tepper: You have read my brief, I take it?

The Court: I read it, yes. I have it on my desk now.

Mr. Deeney: I'm sure the Judge did.

Mr. Tepper: That's all I want to know. If you say you read it I am satisfied.

The Court: In fact, I had to take it home. I don't have enough time to do it here.

Mr. Tepper: It was eighteen pages of reading. I hope it was interesting.

The Court: It was. It was a very good brief. I enjoyed reading it.

Mr. Tepper: All right, Judge.

The Court: I'm sorry I can't rule with you.

Mr. Tepper: All right, your Honor.

(Which were all of the proceedings heard and taken at the hearing of the above-entitled cause)

State of Illinois)
) ss.
County of Cook)

I, NED D. HOSFORD, Official Shorthand Reporter of the Criminal Court of Cook County, Illinois, do hereby certify that I reported in shorthand, as such Official Shorthand Reporter, the proceedings had in habeas corpus number 43980, Philip Gianopoulos versus The People of the State of Illinois, pending in said Court, on the 10th day of October, A. D. 1963, before the Honorable ALEXANDER J. NAPOLI, Chief Justice of said Court, and that I thereafter transcribed into typewriting the above and foregoing transcription, which I hereby certify to be a true and correct transcription of my shorthand notes as aforesaid taken.

Ned D. Hosford
Official Shorthand Reporter
Criminal Court of Cook County,
Illinois.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 731

PHILLIP GIANOPULOS,

Petitioner,

vs.

THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, COOK COUNTY, ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

DANIEL P. WARD,
State's Attorney, Cook County,
Criminal Court Building,
Chicago, Illinois 60602,

ELMER C. KISSANE,
MATTHEW J. MORAN,
Assistant State's Attorneys,
Attorneys for Respondent.

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IN THE

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ON PETITION FOR WRIT OF CERTIORARI TO THE CRIMINAL COURT OF COOK COUNTY, COOK COUNTY, ILLINOIS.

BRIEF FOR RESPONDENT IN OPPOSITION.

DECISION BELOW

On October 10, 1963, the Honorable Alexander J. Napoli, Chief Justice of the Criminal Court of Cook County, sustained a motion to dismiss and entered an order, not reported, denying an application for a writ of *habeas corpus* entitled: "The People of the State of Illinois ex rel. Phillip Gianopulos, Petitioner *vs.* Frank Pate, Warden, Illinois State Penitentiary, Joliet, Illinois, Respondent. No. 43980".

JURISDICTION

The order of the Criminal Court of Cook County, rendered under the Illinois Habeas Corpus Act, is a final decision of the State court of last resort.

Although federal questions were raised by the petitioner in the trial court, the decision of the trial judge was not an adjudication of the petitioner's constitutional rights. As a matter of State law and local procedure, *habeas corpus* is not available in Illinois to test the actions of the Illinois Pardon and Parole Board.

STATUTES INVOLVED

Illinois Revised Statutes; 1961, Chapter 65, § 22-2 (Illinois Habeas Corpus Act):

> § 22. If it appears that the prisoner is in custody by virtue of process from any court legally constituted, he can be discharged only for one of the following causes:
>
> 2. Where, though the original imprisonment was lawful, yet, by some act, omission or event which has subsequently taken place, the party has become entitled to his discharge.

Illinois Revised Statutes, 1964, Chapter 38, §§ 801-810 (Illinois Sentence and Parole Act).

QUESTIONS PRESENTED

Whether or not the petitioner was entitled to a full hearing on an application for a writ of *habeas corpus*, charging an improper revocation of parole by the Illinois Pardon and Parole Board?

Whether the trial court would be authorized to enter an order of discharge under the Illinois Habeas Corpus Act, where an admittedly valid sentence had not expired?

Whether the members of the Illinois Pardon and Parole Board were properly before the trial court, in an action directed against Frank Pate, Warden Illinois State Penitentiary, Joliet Illinois?

Whether the unsupported allegation of the petitioner, that he was not afforded a hearing before the Illinois Pardon and Parole Board should prevail over an express communication of the Board, indicating that a hearing was held?

Whether if a hearing were held and State law relied upon in the dismissal of the petitioner's application, an important federal question is presented for the determination of this Honorable Court?

STATEMENT OF PROCEEDINGS BELOW.

On October 6, 1960, Phillip Gianopulos was found guilty of burglary by the Criminal Court of Cook County and sentenced to a term of one to ten years in the Illinois State Penitentiary. On November 6, 1961, he was released on parole. A parole violation warrant was subsequently issued against him, and Gianopulos was returned to the Illinois State Penitentiary on June 13, 1962.

Gianopulos was heard on the question of his parole violation and on September 19, 1962, the Board found that he was not a violator. This order was revoked on October 17, 1962 and Gianopulos declared a violator on January 16, 1963 (Petitioner's Brief, Appendix 2).

Thereupon, the petitioner filed an application for writ of *habeas corpus* in the Criminal Court of Cook County, which was dismissed upon motion of the respondent.

ARGUMENT.

I.

NO IMPORTANT FEDERAL QUESTION IS INVOLVED.

Petitioner alleges that he was found in violation of parole without a hearing and contrary to due process of law. This unsupported allegation is directly opposed by an official communication from the Pardon and Parole Board, directed to petitioner's counsel (Petitioner's Brief, Appendix 2). Clearly, this document revealed that Gianopulos was heard on the question of parole violation in accordance with the provisions of the Illinois Parole Act and the Rules and Regulations of the Pardon and Parole Board.

Illinois has consistently held that *habeas corpus* is not available under the circumstances of the case at bar. In *People ex rel Castle* v. *Spivey*, 10 Ill. 2d 586, 141 N. E. 2d 321 (1957), the Illinois Supreme Court specifically decided that the writ of *habeas corpus* cannot be used to review a decision of the Pardon and Parole Board. In this case, mandamus was awarded against a trial judge, who on writ of *habeas corpus* discharged a prisoner before full service of a lawful sentence. The Pardon and Parole Board, for an undisclosed reason, had previously refused to grant parole. Accord: *People* v. *Dixon*, 387 Ill. 420, 427, 56 N. E. 2d 816 (1944); *People* v. *Crowe*, 387 Ill. 53, 55 N. E. 2d 84 (1944).

Federal Courts of Appeal have similarly limited *habeas corpus*. In *Howell* v. *Haitt*, 199 F. 2d 584 (5th Cir. 1952), a prisoner held in a federal penitentiary pursuant to revocation of parole was not permitted to obtain review of the Board's decision in a *habeas corpus* proceeding. A

motion to dismiss was sustained by the trial court and the order affirmed on review. The prisoner was held in violation of parole after a trial for armed robbery and a finding of not guilty. Cf. *Fox* v. *Sanford*, 123 F. 2d 334, 335 (5th Cir., 1941).

In *United States* v. *Nicholson*, 78 F. 2d 468, 471 (4th Cir., 1935), certiorari denied, 296 U. S. 573, a contention that the petitioner was not given a proper hearing by a parole board was held not a question within the scope of *habeas corpus*. Mandamus was suggested as a proper remedy.

No federal constitutional question is present in the administration of the Illinois Parole Act. *Haines* v. *Castle*, 226 F. 2d 591 (7th Cir., 1955), certiorari denied 350 U. S. 1014. The parole law of Illinois is administered by an executive branch of the government. In the absence of clear and convincing evidence to the contrary, a court must assume that the Pardon and Parole Board has properly discharged its official duties. *United States ex rel Harris* v. *Ragen*, 177 F. 2d 303 (7th Cir., 1949).

In this case, the Criminal Court of Cook County has not made an adjudication relative to the defendant's constitutional rights. As a matter of local procedure and State law, *habeas corpus* is not available in Illinois to challenge a decision of the Pardon and Parole Board. Therefore, no federal question is involved in the dismissal of the application for a writ of *habeas corpus*. *Loftus* v. *Illinois*, 334 U. S. 804.

II.

A FULL HABEAS CORPUS HEARING WAS NOT WARRANTED.

The power of Illinois courts to grant a discharge under *habeas corpus* is expressly limited by statute. Illinois Revised Statutes, 1961, Chapter 65, section 22. As long as a valid sentence had not expired, a prisoner is not illegally detained, and *habeas corpus* is not available. *Howell* v. *Haitt*, 199 F. 2d 584 (5th Cir., 1952).

The respondent's motion to dismiss emphasized the court's lack of jurisdiction on *habeas corpus*. Briefs were submitted in support of each position and after a careful consideration of the written argument, the trial judge dismissed the application. No request for oral argument was made by petitioner's counsel. To the contrary, he expressed satisfaction with the trial judge's consideration of his application and Brief in support thereof (Petitioner's Brief, Appendix 9). Under these circumstances, the petitioner was granted procedural due process.

III.

PROPER PARTIES WERE NOT BEFORE THE TRIAL COURT.

Petitioner's application for a writ of *habeas corpus* was directed against Frank Pate, Warden of the Illinois State Penitentiary. The Warden is not a member of the Illinois Pardon and Parole Board. Illinois Revised Statutes, 1961, Chap. 127, sec. 5.11. Although an attempt has been made to obtain a review of the Pardon and Parole Board's decision, no member of the Board was made a party to the writ. *Howell* v. *Haitt*, 199 F. 2d 584, 585 (5th Cir., 1952). Failure to join proper parties was, in itself a sufficient basis for the dismissal.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for certiorari be denied.

Respectfully submitted,

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No. 731

IN THE

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OCTOBER TERM, A.D., 1963

PHILIP GIANOPULOS,
Petitioner,

vs.

THE STATE OF ILLINOIS,
Respondent.

On Petition for Writ of Certiorari to the Criminal Court of Cook County, Cook County, Illinois

REPLY TO THE RESPONDENT'S BRIEF BY THE PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D., 1963

NO. 731

PHILIP GIANOPULOS,

Petitioner,

vs.

THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Criminal Court of Cook County, Cook County, Illinois

REPLY TO THE RESPONDENT'S BRIEF BY THE PETITIONER

PREAMBLE

The Respondent by counsel correctly states the formal decision of the court below (p. 1) and the statutes involved (p. 2). However, under "Jurisdiction" (p. 2), he endeavors to mislead this Honorable Court with the now old, but still rapturous, Illinois' cliche', "As a matter of State law and local procedure, *habeas corpus* is not available . . .", on admission that federal questions were properly before the criminal court of Cook County. Following by "Questions Presented" (pp. 2-3), alternative, trite and

new issues of evasion are introduced, perhaps, to foist burden, if not confusion, on petitioner and this August Court. The "Statement of Proceedings Below" (p. 3) does lack the "clear and convincing" essential facts; which are: that after being returned on June 13, 1962, by virtue of a parole violation warrant, he received a hearing by the Parole Board which entered an order on September 19, 1962, declaring him not to be a violator; thereafter all subsequent orders of that administrative body—revocation of parole, continuances, finding him to be a violator and setting his next hearing date to June 13, 1967—were entered without notice or hearing to petitioner (Petition pp. 2-3, R. 3, 4, 7, 8, 10, 11).

ARGUMENT.

I.

IMPORTANT FEDERAL QUESTIONS ARE INVOLVED

Each and every one of the questions raised by his petition (Pet. pp. 8-9) are important federal questions; they have been acknowledged as such by Respondent thru counsel under "Jurisdiction" (p. 2), have been passed upon by formal order of the court below (Pet. Appendix 1, pp. 15-16), and decided on the hearing which that order was rendered by the trial judge (Pet. Appendix 9, pp. 33-35), that petitioner was not entitled to hearing on arbitrary and capricious acts of the Parole Board.

This Honorable Court in the past has been called upon to decide whether state and federal agencies in various fields have exceeded or abused the powers of their office in violation of the Fourteenth Amendment to the United States Constitution, and have always held the essentials of Due Process of Law are notice and hearing before judgment is rendered. *Riverside Cotton Mills* v. *Menefree*, 237 U.S. 189; *Western Life Ins. Co.* v. *Newport*, 247 U.S. 464; *Royal Drug Co.* v. *Wardell*, 260 U.S. 386. Illinois Courts have recognized this to be the Law of the Land in countless cases too. *Pipe Trades* v. *Rauch*, 2 Ill. 2d 278; *People ex rel. Armanetti, Inc.* v. *City of Chicago*, 415 Ill. 165. The petitioner believes he is entitled to the same Due Process of Law requirements from the Board of Pardon and Paroles on parole revocation proceedings as are other citizens from different administrative agencies.

Illinois courts have never barred the door to the use of *habeas corpus* as suggested by the Respondent (pp. 4-5) where arbitrary or excessive abuse of power is shown.

The contrary is apparent from the very cases he cites as authority. *People ex rel. Castle v. Spivey*, 10 Ill. 2d 586, at pg 593, Mr. Justice Davis said:

> "We have repeatedly held that a court has jurisdiction in a *habeas corpus* proceeding only when the original judgment of conviction was void, *or when something has happened since its rendition to entitle petitioner to release;* and that where the legality of the original imprisonment is not challenged *the inquiry is ordinarily limited to determine whether the maximum term for which the defendant was sentenced has expired.*" (cases cited; emphasis supplied)

and further at p. 594:

> "The record does not disclose the reasons for such action, *but we cannot assume that the board acted without cause, or that its action was purely arbitrary or beyond its powers.*"

still further on p. 595:

> "*People ex rel Day* v. *Lewis*, 376 Ill. 509, involved *original habeas corpus in this court in which petitioner alleged arbitrary forfeiture of good time by the Department of Public Welfare for infractions of rules.* We held that the department had authority to promulgate prison rules; that the prisoner was guilty of five infractions thereof; that this court could not, in a *habeas corpus* proceeding, interfere with the exercise of an administrative function by attempting to substitute its judgment for that of the department; *that this court had jurisdiction to determine whether or not administrative discretion had been abused in the forfeiture of the prisoner's good time;* that there was no abuse by the department: . . ."

> "We further held where the action of the Department of Public Welfare has been taken in conformity with controlling rules, *the courts in habeas corpus will inquire only whether the department officers have acted within their powers.* . . ."

Petitioner is not here seeking review of the Parole Board's decision, he has shown by "clear and convincing evidence" that the parole law and rules made pursuant thereto have arbitrarily and capriciously been ignored by an executive branch of the government; therefore, how can it be assumed that the Pardon and Parole Board properly discharged it official duties? *United States ex rel Harris v. Ragen*, 177 F. 2d 303 (7th Cir., 1949)—(Respondent's Brief, pp. 5); See also: 81 F. Supp. 608.

It has been demonstrated the state's highest court has interpreted the Illinois *Habeas Corpus* Act (Ill. Rev. Stat., 1961, Ch. 65, Sec. 22-2) to be a proper remedy in a case of the type at bar, and the Federal District and Circuit Courts have taken cognizance of this rule. However, in practice, now as in the past, no relief is available by Illinois proceedings, and petitioner relies on the teachings of this Court in *Foster v. Illinois*, 332 U.S. 134 by the claim of denial of due process of law in the obvious absence of a procedural remedy.

II.

A FULL HABEAS CORPUS HEARING WAS WARRANTED

Under the record of this case, the petitioner was not afforded procedural due process by the court below. At the offset of the proceedings on which the motion to dismiss was sustained (Appendix 9, pp. 33-35), the Court precluded any argument in the matter. Subsequently, when counsel endeavored to point out the arbitrary and capricious acts of the Parole Board he was cut off. Counsel's urging for hearing was negatively received. The printed page does not vividly show the concatenation of those proceedings, but ample, it is believed, to show the petitioner

was not granted procedural due process under the circumstance that his liberty was involved. In Illinois, a writ of *habeas corpus* imports verity until impeached, and requires no supporting evidence. *People ex rel. Day v. Lewis*, 376 Ill. 509. A full hearing was requisite under the allegations made to afford petitioner procedural due process of law.

III.

PROPER PARTIES WERE BEFORE THE COURT BELOW

Respondent by counsel is trying to change the "State law and local procedure" with the one ruling *Howell* v. *Haitt*, 199 F. 2d 584 (5th Cir., 1952), but the State Supreme Court on original *habeas corpus* proceedings has held it to be a proper remedy to review administrative orders and have done so in each of the following cases:

People v. *Hill*, 344 Ill. 246;
Purdue v. *Ragen*, 375 Ill. 98;
People ex rel. Milburn v. *Niersthcimer*, 401 Ill. 465;
People ex rel. Miller v. *Niersthcimer*, 402 Ill. 599;
People ex rel. Prina v. *Robinson*, 409 Ill. 105.

In each of the above cases the Warden of the State Penitentiary where the prisoner was confined was properly named the respondent, though the rulings, orders, acts, decisions, events or omissions passed upon involved the Parole Board.

CONCLUSION

As there exists great divergence of opinion (See: R. 18-23) as to whether a convicted person is entitled to due process of law on parole revocation matters in the Federal and State Courts of the Land, it is urged this Honorable Court take a stand as a guide to future proceedings.

For the foregoing reasons, it is submitted that this petition for certiorari be granted.

Respectfully submitted,

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Petitioner Pro Se.

SIDNEY TEPPER,
Of Counsel.